

Directorate General Secretariat

ECB-UNRESTRICTED

Mr Gavin Sheridan
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11 March 2013
LS/PvdH/13/5

Request for public access to ECB documents

Dear Mr Sheridan,

On 7 February 2013 the European Central Bank (ECB) received your request for access to *(1) all records in the possession of the ECB in relation to any proposed Irish legislation surrounding IBRC (known as the Irish Bank Resolution Corporation Bill 2013); and (2) all communications between the ECB (its board, president or staff) and the Irish authorities (be they staff, politicians, ministers, departments) between February 4, 2013 and February 7, 2013, inclusive.*

Following a thorough assessment of your request, in line with the requirements established by Decision ECB/2004/3 on public access to ECB documents¹, it has been decided to grant you access to a letter from Mr Martin to the ECB President, received on 5 February 2013 (see attachment).

We would like to draw your attention to Article 10 of Decision ECB/2004/3, which states that *“documents released [...] shall not be reproduced or exploited for commercial purposes without the ECB’s prior specific authorisation. The ECB may withhold such authorisation without stating reasons”*.

The remaining documents that are of relevance to your request cannot be disclosed, even in part, as they are protected under the second indent of Article 4(1)(a) (*the monetary policy of the Union and the financial or economic policy of a Member State*, i.e. Ireland) and the seventh indent of Article 4(1)(a) of the same Decision (*the stability of the financial system in the Union or in a Member State*, i.e. Ireland). The documents containing the proceedings of the ECB’s decision-making bodies in this regard are also protected under the first indent of Article 4(1)(a) of Decision ECB/2004/3 (*the confidentiality of the proceedings of the ECB’s decision-making bodies*) and therefore cannot be disclosed, even in part.

The interest of the ECB in the developments surrounding the promissory notes issued by the Irish government, including their restructuring, stems from the fact that the promissory notes have been provided as collateral in liquidity operations with the Central Bank of Ireland. The treatment of these promissory notes and their restructuring are relevant to the ECB’s fulfilment of its mandate, from the perspective of ensuring that the Central Bank of Ireland’s liquidity operations are consistent with the

¹ OJ L 80, 18.3.2004, p. 42, as amended by Decision ECB/2011/6 of 9 May 2011, L 158, 16.6.2011, p. 37.

implementation of the ECB's monetary policy operations, also from the perspective of contributing to the stability of the financial system and from the perspective of ensuring compliance with the prohibition of monetary financing.

In particular with regard to your request for access to all communications between the ECB and the Irish authorities, we should like to note that, although such communications took place, the relevant documentation – containing mainly views on possible scenarios and possible future developments – cannot be disclosed for the reasons outlined above. Any views expressed by the ECB in this context were aimed at providing its informal opinion and advice to the Central Bank of Ireland during the various stages of this process, as is usually the case with such processes and also in the context of the ongoing economic adjustment programme for Ireland. In fact, it is of crucial importance for the ECB to be in a position to convey pertinent and candid views to European and national authorities of the euro area in the manner judged to be the most effective for serving the public interest. If it is required and in the best interests of the public, an effective, informal and confidential exchange of views must be possible and should not be undermined by the prospect of disclosure. Otherwise, the ECB's ability to effectively discharge its monetary policy mandate would be jeopardised and its capacity to contribute effectively to financial stability would be undermined.

In addition, some of the documents that you requested contain opinions and views that are also protected under the second indent of Article 4(2) of Decision ECB/2004/3 (*legal advice*) since their disclosure would undermine the ECB's interest in receiving frank, objective and comprehensive internal and/or external legal advice and the possibility of the legal services to freely submit uncensored legal advice in the context described and in relation to the content mentioned in the above paragraphs. On the basis of the content of these documents, there is no overriding public interest that could justify their disclosure, and it is not possible to grant partial access to them without undermining the interest protected.

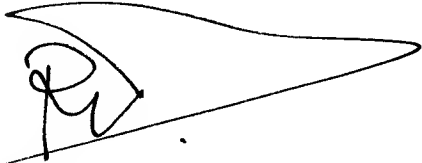
Moreover, some of the documents that you requested contain internal and preparatory views that are also protected under Article 4(3) of Decision ECB/2004/3 (*a document containing opinions for internal use as part of deliberations and preliminary consultations within the ECB or with NCBs*). The ECB considers that disclosing these documents would undermine the possibility for ECB staff to freely submit uncensored advice to the ECB's decision-making bodies and that it would thus limit the ECB's "space to think". It is therefore in the public interest to protect internal consultations and deliberations. Disclosing the documents would also undermine the possibility of an effective, informal and confidential exchange of views with the Central Bank of Ireland, which is part of the Eurosystem. On the basis of the content of these documents, the ECB notes that there is no overriding public interest that could justify their disclosure, and it is not possible to grant partial access to them without undermining the interest protected.

As indicated at the ECB's press conference on 7 February 2013, the Governing Council took note, at its meeting on the same day, of the actions and intentions of the Irish government and the Central Bank of Ireland in relation to this operation. If you wish to obtain details on the operation, we would refer you to the Irish authorities.

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For the sake of good order, please note that Article 7(2) of Decision ECB/2004/3 provides that *“in the event of total or partial refusal, the applicant may, within 20 working days of receiving the ECB’s reply, make a confirmatory application asking the ECB’s Executive Board to reconsider its position”*.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'P' and 'v' followed by a long horizontal stroke.

Pierre van der Haegen
Director General Secretariat

A handwritten signature in black ink, appearing to read 'R. Schremser'.

Roman Schremser
Senior Adviser Secretariat